IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 407 OF 2007

Shri Pandurang Krishna Katkar .... Appellant

Vs.

Ramchandra Bandopant Kulkarni .... Respondent

Mr. Umesh Mankapure for Appellant.

CORAM : A.S. OKA, J.
DATE : 14TH DECEMBER, 2007

P.C.

1) Heard Shri Mankapure, learned Advocate appearing for the Appellant. The Appellant is the original defendant. A decree for redemption of mortgage of the suit property has been passed. The only question involved in the Second Appeal is whether the document at Exhibit 33 is a mortgage by conditional sale or whether it is an absolute sale. The submission of Shri Mankapure is that on plain reading of document Exhibit 33 and the other admitted documentary evidence on record, the transaction cannot be of a mortgage.

2) I have carefully considered the submissions. In my view, it is not open for the Appellant to raise the said contention. In another suit being R.C.S No. 298 of 1997, in his evidence

the Appellant admitted that the transaction subject matter of the present suit was a mortgage. When the Appellant stepped into the witness box in the present suit, he was confronted with the aforesaid statement made by him in evidence recorded in R.C.S. no. 298 of 1997. The Appellant accepted the fact that the said statement was made by him in the evidence in the said suit.

3) Thus the Appellate Court was right in holding that there was an admission by the Appellant regarding the nature of the suit transaction.

4) No substantial question of law arises. In view of concurrent findings of fact, Second Appeal is dismissed with no order as to costs.

5) Civil Application No. 1246 of 2004 does not survive and is disposed of.

(A.S. OKA, J.)